

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HUSSEIN ALI,

Plaintiff,

v.

BRIDGECREST CREDIT
COMPANY, LLC

Defendant.

Case No. 1:24-cv-01364-JLT-EPG

FINDINGS AND
RECOMMENDATIONS TO DISMISS
THIS ACTION WITHOUT PREJUDICE
DUE TO PLAINTIFF'S FAILURE TO
COMPLY WITH A COURT ORDER
AND LOCAL RULE 183(b)

OBJECTIONS, IF ANY,
DUE WITHIN 30 DAYS

Plaintiff Hussein Ali is proceeding *pro se* in this civil rights action filed on October 3, 2024, against Bridgecrest Credit Company, LLC ("Bridgecrest" or "Defendant"). On November 13, 2024, Bridgecrest filed a motion to dismiss the complaint for failure to state a claim. (ECF No. 5). Plaintiff has not opposed the motion. Plaintiff has not otherwise appeared in this case since its removal from state court, and all of mail the Court has sent Plaintiff has been returned as undeliverable.

Because Plaintiff has failed to comply with a court order and Local Rule 183(b), both of which require a Plaintiff to notify the Court of the Plaintiff's current address, the Court will recommend that this action be dismissed without prejudice.

I. ANALYSIS

This Court's informational order entered on November 7, 2024, states as follows:

1 A Plaintiff proceeding in propria persona has an affirmative duty to keep the Court
2 and opposing parties informed of his or her current address. If a plaintiff moves
3 and fails to file a notice of change of address, service of Court orders at plaintiff's
4 prior address shall constitute effective notice. *See* Local Rule 182(f).
5 If mail directed to plaintiff is returned by the U.S. Postal Service as undeliverable,
6 the Court will not attempt to re-mail it. **If the address is not updated within 60
days of the mail being returned, the action will be dismissed for failure to
prosecute.**

7 (ECF No. 4-3 at 3) (emphasis in original).

8 Additionally, Local Rule 183(b) provides as follows:

9 A party appearing in propria persona shall keep the Court and opposing parties
10 advised as to his or her current address. If mail directed to a plaintiff in propria
11 persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff
12 fails to notify the Court and opposing parties within sixty-three (63) days
thereafter of a current address, the Court may dismiss the action without prejudice
for failure to prosecute.

13 E.D. Cal. L.R. 183(b) (emphasis omitted).

14 On November 7, 2024, the Clerk served Plaintiff at the address provided on the
15 complaint with, among other documents, the Court's scheduling order, informational order, and
16 a blank consent form. On November 20, 2024, the Clerk sent Plaintiff a copy of the Court's
17 November 20 minute order and the November 20 notice of reassignment. The next day, on
18 November 21, 2024, the Clerk sent Plaintiff a copy of Judge Thurston's standing order. Over
19 the next several months, the Court sent Plaintiff additional mail, including several other minute
20 orders. However, on February 20, 2025, the mail originally sent to Plaintiff on November 20,
21 2024, and November 21, 2024, was returned as undeliverable due to a "closed box." The next
22 day, the documents first mailed to Plaintiff on November 7, 2025, were also returned as not
23 deliverable and unable to be forwarded. Since then, the rest of Plaintiff's legal mail has been
24 returned as undeliverable. More than 62 days have passed since Plaintiff's mail was first
25 returned as undeliverable, and Plaintiff has not filed a notice of change of address or anything
26 else in this case since then.

27 Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action for failure
28 to comply with court orders and to prosecute. In determining whether to dismiss an action

1 under Rule 41(b) for failure to prosecute or failure to comply with a Court order, “the Court
2 must weigh the following factors: (1) the public’s interest in expeditious resolution of
3 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
4 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy
5 favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th
6 Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)).

7 In applying the *Pagtalunan* factors to this case, the first factor weighs in favor of
8 dismissal, because “[t]he public’s interest in expeditious resolution of litigation always favors
9 dismissal.” *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)
10 (internal quotation marks omitted).

11 As to the second factor, the Court’s need to manage its docket, “[t]he trial judge is in
12 the best position to determine whether the delay in a particular case interferes with docket
13 management and the public interest.” *Id.* As described above, Plaintiff has failed to provide an
14 updated address as required by a court order and Local Rule 183(b), which interferes with
15 docket management and keeps the case from progressing. Notably, by failing to provide an
16 updated address to receive the Court’s orders, Plaintiff lacks critical information for how to
17 progress the case. Accordingly, this factor weighs in favor of dismissal.

18 Turning to the third *Pagtalunan* factor, risk of prejudice to Defendants, “pendency of a
19 lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal.” *Pagtalunan*, 291
20 F.3d at 642 (citing *Yourish*, 191 F.3d at 991). However, “delay inherently increases the risk
21 that witnesses’ memories will fade and evidence will become stale,” and it is Plaintiff’s
22 inaction that is delaying the case from progressing. *Id.* at 643. Moreover, Plaintiff’s decision
23 not to oppose the pending motion to dismiss, suggests that this case lacks merit. Accordingly,
24 this third factor weighs in favor of dismissal.

25 As for the availability of lesser sanctions, the fourth *Pagtalunan* factor, at this stage in
26 the proceedings there is little available to the Court which would constitute a satisfactory lesser
27 sanction while protecting the Court from further unnecessary expenditure of its scarce
28 resources. It is unclear whether Plaintiff would be able to pay a monetary sanction.

1 Additionally, given the stage of these proceedings, the preclusion of evidence or witnesses is
 2 not available. Moreover, dismissal *without prejudice* is the lesser sanction available to the
 3 Court. Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action *with*
 4 prejudice for failure to comply with court orders and to prosecute. Fed. R. Civ. P. (41)(b); *see*
 5 *also Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (holding that Rule 41(b) allows *sua*
 6 *sponte* dismissal by the Court because “[t]he authority of a court to dismiss *sua sponte* for lack
 7 of prosecution has generally been considered an ‘inherent power,’ governed not by rule or
 8 statute but by the control necessarily vested in courts to manage their own affairs so as to
 9 achieve the orderly and expeditious disposition of cases.”). Therefore, the fourth factor also
 10 weighs in favor of dismissal.

11 Finally, because public policy favors disposition on the merits, this factor weighs
 12 against dismissal. *Pagtalunan*, 291 F.3d at 643.

13 After weighing the factors, the Court finds that dismissal without prejudice is
 14 appropriate.

15 II. CONCLUSION AND RECOMMENDATIONS

16 Accordingly, the Court **RECOMMENDS** that:

- 17 1. This action be dismissed without prejudice under Federal Rule of Civil Procedure
- 18 41(b) due to Plaintiff’s failure to comply with a court order and Local Rule 183(b);
- 19 2. The pending motion to dismiss (ECF No. 5) be denied as moot; and
- 20 3. The Clerk of Court be directed to close this case.

21 These findings and recommendations will be submitted to the United States district
 22 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
 23 thirty days after being served with these findings and recommendations, Plaintiff may file
 24 written objections with the Court. The document should be captioned “Objections to
 25 Magistrate Judge’s Findings and Recommendations.”

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1 Plaintiff is advised that failure to file objections within the specified time may result in
2 the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014)
3 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
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5 IT IS SO ORDERED.

6 Dated: April 23, 2025

/s/ Eric P. Grogan
7 UNITED STATES MAGISTRATE JUDGE
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